

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY L. WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, LA

*Docket No. 03-1603; Submitted on the Record;
Issued January 22, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

On May 14, 1987 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging that on April 7, 1987 he first became aware that his acute synovitis of the right knee was caused by factors of his federal employment.

By letter dated March 18, 1988, the Office accepted appellant's claim for right knee strain.

The Office received a January 22, 2000 letter from appellant to his congressional representative, indicating that he had ongoing problems with his knee nine years after he started working for the employing establishment and that his knee was never properly treated.

In a February 11, 2000 letter, appellant's congressional representative advised the Office that appellant wished to have his case reopened. In a March 14, 2000 response letter, the Office stated that appellant's case had been closed since April 4, 1989 and that his case record was located in the federal records center. The Office suggested that appellant submit a recurrence claim (Form CA-2a), to the employing establishment if he wished to have his case reopened.

In an April 28, 2000 letter, the Office advised appellant to submit a Form CA-2a, through the employing establishment along with factual and medical evidence supportive of his claim. On May 12, 2000 he filed a Form CA-2a, alleging that he sustained a recurrence of disability. Appellant stated that "this is a continuing injury since 1987" and that at the time his condition worsened in 1999 he was unemployed.

By decision dated June 13, 2000, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to his April 7, 1987

employment injury. In a June 23, 2000 letter, he requested an oral hearing before an Office hearing representative.

In a May 7, 2001 decision, the hearing representative affirmed the Office's decision. Appellant requested reconsideration by letter dated September 17, 2001.

The Office issued a December 12, 2001 decision denying modification of its previous decision based on a merit review of appellant's claim.

In an August 22, 2002 letter, appellant requested reconsideration.

By decision dated March 7, 2003, the Office denied appellant's request for a merit review of his claim on the grounds that it neither included new and relevant evidence nor raised substantive legal questions and thus, it was insufficient to warrant review of its prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed his request for an appeal on June 9, 2003, the only decision before the Board is the March 7, 2003 decision denying his request for a merit review.

The Board finds that the Office improperly refused to reopen appellant's claim for a further review of the merits of his claim under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

In support of his request for reconsideration, appellant submitted the June 5, 2001 medical treatment notes of Dr. Stephen J. Flood, a Board-certified orthopedic surgeon and his treating physician, indicating that he had been under Dr. Flood's care for employment injuries sustained in the 1980s. Dr. Flood stated that these injuries caused ligamentous weakness and deterioration over time, which were a causative factor for appellant's current condition. Appellant also submitted Dr. Flood's September 13, 2001 report reiterating the treatment of his

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

1980s employment injuries and the causal relationship between these injuries and his current knee condition.

The above treatment notes and report of Dr. Flood submitted by appellant are duplicative of evidence already contained in the record and previously considered by the Office. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁵

On reconsideration, appellant contended that he sustained a consequential injury in the form of arthritis in his right knee due to his April 7, 1987 employment injury. He submitted a June 25, 2002 report of Dr. Flood in support of this contention. In his June 25, 2002 report, he provided a history of appellant's medical treatment prior to his treatment of right knee condition. Dr. Flood stated that "[appellant's] claim was accepted in 1988, as a strain of his right knee and this resulted in internal derangement of the right knee as well as right knee arthritis." He further stated that his prognosis of the knee was good and that appellant did not require surgery, but that he may require continuing medication to keep his pain under control.

Dr. Flood's June 25, 2002 report constitutes relevant and pertinent new evidence not previously considered by the Office, such that review of the evidence and the case on its merits is warranted as to whether appellant's current knee conditions are due to his April 7, 1987 employment injury. Therefore, the Board finds that the Office improperly denied appellant's request for a review of the merits of his claim under section 8128(a) of the Act.

The March 7, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration on its merits.

Dated, Washington, DC
January 22, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 25 ECAB 309 (1983).